

INTRODUCTION TO THE FALL 2007 REGULATORY PLAN

Federal regulation is a fundamental instrument of national policy. It is one of the three major tools -- in addition to spending and taxing -- used to implement policy. It is used to advance numerous public objectives, including homeland security, environmental protection, educational quality, food safety, transportation safety, health care quality, equal employment opportunity, energy security, immigration control, and consumer protection. The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is responsible for overseeing and coordinating the Federal Government's regulatory policies.

The Regulatory Plan is published as part of the fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions, and serves as a statement of the Administration's regulatory and deregulatory policies and priorities. The purpose of the Plan is to make the regulatory process more accessible to the public and to ensure that the planning and coordination necessary for a well-functioning regulatory process occurs. The Plan identifies regulatory priorities and contains information about the most significant regulatory actions that agencies expect to undertake in the coming year. An accessible regulatory process enables citizen centered service, which is a vital part of the President's Management Agenda.

Federal Regulatory Policy

The Bush Administration supports Federal regulations that are sensible and based on sound science, economics, and the law. Accordingly, the Administration is striving for a regulatory process that adopts new rules when markets fail to serve the public interest, simplifies and modifies existing rules to make them more effective or less costly or less intrusive, and rescinds outmoded rules whose benefits do not justify their costs. In pursuing this agenda, OIRA has adopted an approach based on the principles of regulatory analysis and policy espoused in Executive Order 12866, signed by President Clinton in 1993.

Effective regulatory policy is not uniformly pro-regulation or anti-regulation. It begins with the authority granted under the law. Within the discretion available to the regulating agency by its statutory authority, agencies apply a number of principles articulated in Executive Order 12866, as well as other applicable Executive Orders, in order to design regulations that achieve their ends in the most efficient way. This means bringing to bear on the policy problem sound economic principles, the highest quality information, and the best possible science. This is not always an easy task, as sometimes economic and scientific information may point in very different directions, and therefore designing regulations does not mean just the rote application of quantified data to reach policy decisions. In making regulatory decisions, we expect agencies to consider not only benefit and cost items that can be quantified and expressed in monetary units, but also other attributes and factors that cannot be integrated readily in a benefit-cost framework, such as fairness and privacy. However, effective regulation is the result of the careful use of all available high-quality data, and the application of broad principles established by the President.

In pursuing this goal of establishing an effective, results-oriented regulatory system, the Bush Administration has increased the level of public involvement and transparency in the development of regulations, including in OMB's review of new and existing regulations.

The Administration's e-rulemaking initiative is designed to improve the public's ability to get involved in the rulemaking process. Visitors to the website, <http://www.regulations.gov>, can view and comment electronically on regulations proposed by Federal departments and agencies. Starting with this edition, the Regulatory Plan and Unified Agenda are available electronically in searchable database format at <http://reginfo.gov>. Additionally, beginning in early 2008, prior editions of the Regulatory Plan and Unified Agenda will also be made available in searchable format at <http://reginfo.gov>.

For new rulemakings and programs, OIRA has enhanced the transparency of OMB's regulatory review process. OIRA's website now enables the public to find which rules are formally under review at OMB and which rules have recently been cleared or have been returned to agencies for reconsideration. OIRA has also increased the amount of information available on its website. In addition to information on meetings and correspondence, OIRA makes available communications from the OIRA Administrator to agencies, including "prompt letters," "return letters," and "post clearance letters," as well as the Administrator's memorandum to the President's Management Council (September 20, 2001) on presidential review of agency rulemaking by OIRA.

For existing rulemakings, OIRA has initiated a modest series of calls for reform nominations in 2001, 2002, and 2004. In the draft 2001 annual Report to Congress on the Costs and Benefits of Federal Regulation, OMB asked for suggestions from the public about specific regulations that should be modified in order to increase net benefits to the public. We received suggestions regarding 71 regulations, 23 of which OMB designated as high priorities. After a similar call for reforms in the 2002 draft Report, OMB received recommendations on 316 distinct rules, guidance documents, and paperwork requirements from over 1,700 commenters. Many of the nominations involved rules and guidance documents that were recently issued or already under review by the agencies, or involved independent agency rules or guidance documents. OMB determined that the remaining 122 rules and 34 guidance documents were not under active review, and referred them to the agencies for their evaluation as possible reforms. Finally, in the 2004 draft Report, OMB requested public nominations of promising regulatory reforms relevant to the manufacturing sector. In particular, commenters were asked to suggest specific reforms to rules, guidance documents, or paperwork requirements that would improve manufacturing regulation by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty, and increasing flexibility. In response to the solicitation, OMB received 189 distinct reform nominations from 41 commenters. Of these, Federal agencies and OMB have determined that 76 of the 189 nominations have potential merit and justify further action. For further information, all of these Reports are available on OIRA's website at <http://www.whitehouse.gov/omb/infoereg/regpol.html>.

The Bush Administration has also moved aggressively to establish basic quality performance goals for all information disseminated by Federal agencies, including information disseminated in support of proposed and final regulations. The Federal agencies issued guidelines on October 1, 2002 under the Information Quality Act to ensure the "quality, objectivity, utility, and integrity" of all information disseminated by Federal agencies. Under these guidelines, Federal agencies are taking appropriate steps to incorporate the information quality performance standards into agency information dissemination practices, and developing pre-dissemination review procedures to substantiate the quality of information before it is disseminated. Under the agency information quality guidelines, "affected persons" can request that the agencies correct information if they believe that scientific, technical, economic, statistical or other information disseminated does not meet the agency and OMB standards. If the requestor is dissatisfied with the initial agency response to a correction request, an appeal opportunity is provided by the agencies. With the implementation of these guidelines, agencies are now aware that ensuring the high quality of government information disseminations is a high priority of the Administration. Further information on OIRA's activities implementing the Information Quality Act is available on OIRA's website at <http://www.whitehouse.gov/omb/infoereg/infopoltech.html>.

As part of its efforts to improve the quality, objectivity, utility, and integrity of information disseminated by the Federal agencies, on December 16, 2004, OMB issued a Final Information Quality Bulletin for Peer Review. This Bulletin establishes government-wide guidance aimed at enhancing the practice of peer review of government science documents. The Bulletin describes minimum standards for when peer review is required and how intensive the peer review should be for different information. The Bulletin requires the most rigorous form of peer review for highly influential scientific assessments. Further information on peer review is available on OIRA's website at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf>.

Recognizing the importance of agency interpretations of existing regulations, OIRA recently changed its policies concerning the development and review of agency “guidance documents.” On January 18, 2007, the President issued Executive Order 13422, “Amendment to Executive Order 12866 for Regulatory Planning and Review.” On that same day, OMB issued its Bulletin on Agency Good Guidance Practices. The primary focus of the Executive Order and the Good Guidance Bulletin is to increase the quality, transparency, and accountability of guidance documents.

The Good Guidance Bulletin, which OMB issued after seeking public comment on a proposed version, established policies and procedures for agencies to apply in their development and issuance of “significant” and “economically significant” guidance documents. This Bulletin will ensure that guidance documents are of high quality, developed with appropriate agency review and public participation, and readily accessible by the public.

The principal change to E.O. 12866 is a new process that will provide an opportunity for interagency coordination and review of significant guidance documents prior to their issuance. E.O. 12866 was amended in several other ways. For example, to ensure appropriate accountability, the E.O. modifies the procedures for an agency’s adoption of its annual Regulatory Plan and requires that an agency’s Regulatory Policy Officer be a Presidential appointee. The E.O. also updates the Principles of Regulation in E.O. 12866 to reflect the guidance-coordination provisions in pre-existing OMB guidance.

In addition to increasing the level of public involvement and transparency in its review of regulations, the Bush Administration has sought to enhance the role of analysis in the development of effective regulations. On September 17, 2003, OMB issued revised guidance to agencies on regulatory analysis.¹ Key features of the revised guidance include more emphasis on cost-effectiveness, more careful evaluation of qualitative and intangible values, and a greater emphasis on considering the uncertainty inherent in estimates of impact. OIRA was very interested in updating the guidance in light of these and other innovations now commonplace in the research community.

Further, in 2007 OMB and the Office of Science and Technology Policy (OSTP) issued an updated memorandum outlining principles for conducting analyses of health, safety, and environmental risk. The memorandum reaffirms risk analysis principles previously released by OMB in 1995 and reinforces them with more recent guidance from the scientific community, Congress, and the Executive Branch. The 2007 Regulatory Plan continues OIRA’s effort to ensure coordination across Federal agencies in pursuing analytically sound regulatory policies.

The Administration’s 2007 Regulatory Priorities

With regard to Federal regulation, the Bush Administration’s objective is quality, not quantity. Those rules that are adopted promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater durability in the face of political and legal attack. The Regulatory Plan is integral to enhancing the quality of Federal regulations, and OMB seeks to ensure that the public is provided with the information needed to understand and comment on the Federal regulatory agenda. Accordingly, the 2007 Regulatory Plan highlights the following themes:

- Regulations that are particularly good examples of the Administration’s “smart” regulation agenda to streamline regulations and reporting requirements, which is a key part of the President’s economic plan.
- Regulations that are of particular concern to small businesses.
- Regulations that respond to public nominations submitted to OMB in 2001 or 2002.

¹See Circular A-4, “Regulatory Analysis,” published as part of OMB’s 2003 Report to Congress on the Costs and Benefits of Federal Regulations. The report is available on OMB’s website at http://www.whitehouse.gov/omb/inforeg/2003_cost-ben_final_rpt.pdf

- Regulations that address 2004 nominations for promising regulatory reforms in the manufacturing sector.

Conclusion

Smarter regulatory policies, created through public participation, transparency, and cooperation across Federal agencies, are a key Administration objective. The following department and agency plans provide further information on regulatory priorities. All agencies' plans are a reflection of the Administration's Federal Regulatory Policy objectives, which aim at implementing an effective and results-oriented regulatory system.